

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:07 CV 426-H

ADVANCED INTERNET TECHNOLOGIES,)
INC.)
)
Plaintiff,)
)
vs.)
)
DELL INC. and DELL FINANCIAL)
SERVICES, INC.,)
)
Defendants.)

**DEFENDANT DELL INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Defendant Dell Inc. ("Dell"), by and through its undersigned counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby moves the Court for an order of partial summary judgment. Plaintiff Advanced Internet Technologies, Inc. ("AIT") commenced this suit against Dell on November 1, 2007 and asserts claims for (1) Breach of Express Warranty (Count I); (2) Breach of Warranty of Merchantability (Count II); (3) Breach of Implied Warranty of Fitness for a Particular Purpose (Count III); (4) Fraud (Count IV); (5) Unfair and Deceptive Business Practices (Count V); (6) Negligence (Count VI), and in the alternative (7) Breach of Contract (Count VII). [DE # 1]. On September 9, 2008, this Court dismissed AIT's claim for Negligence. [DE # 39]. On October 29, 2008, after seeking leave to amend, AIT filed its First Amended Verified Complaint ("FAC") adding Dell Financial Services, Inc.¹ ("DFS") as a defendant and adding claims for (1) Fraud by Defendants (new Count VI); (2) Unfair and Deceptive Acts by Defendants (new Count VII); and (3) Civil Conspiracy (Count VIII). [DE # 41]. Discovery in this case closed on February 5, 2010, and this matter is set for trial on October 18, 2010.

As support for this Motion, Dell relies on the evidence set forth in its Memorandum In Support of Defendant Dell Inc.'s Motion for Partial Summary Judgment filed herewith. As demonstrated in Dell's

¹ The First Amended Verified Complaint improperly named Dell Financial Services LLC, Dell Financial Services, Inc.

Memorandum, application of the governing law to the undisputed facts of this action demonstrates the Dell is entitled to an order of partial summary judgment. Specifically, Dell respectfully requests that the Court enter an Order ruling that: (1) because the dispute is governed by conscionable, enforceable contractual terms between sophisticated commercial parties, the maximum damages available to AIT in this case are limited to the amounts paid by AIT for products proven at trial to have a product defect caused by Dell; (2) because this dispute involves only economic losses, all tort claims and statutory unfair and deceptive trade practices claims (Counts IV – VIII in the FAC) are dismissed with prejudice; and (3) to the extent AIT's claimed damages are speculative, uncertain and unsupported by the evidence, those damages cannot be recovered as a matter of law.

Respectfully submitted, this 30th day of April, 2010.

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2010, I electronically filed the foregoing **Motion for Partial Summary Judgment** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Scott A. Elder
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